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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,941	01/03/2002	Carolyn Jean Cupp	112701-330	7917
29157	7590	07/30/2004		
BELL, BOYD & LLOYD LLC P. O. BOX 1135 CHICAGO, IL 60690-1135				
			EXAMINER HENDRICKS, KEITH D	
			ART UNIT	PAPER NUMBER

1761

DATE MAILED: 07/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 10/037,941	Applicant(s) CUPP ET AL.	
	Examiner Keith Hendricks	Art Unit 1761	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 July 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☒ they raise the issue of new matter (see Note below);
 - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: (see continuation sheet).

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: (see continuation sheet).
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 1-33.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


10/037,941

The newly-added phrase "wherein the dried pet food comprises... a length that is greater than its thickness", does not find support in the original disclosure. There are at least two interpretations that one skilled in the art may assign to a three-dimensional object. Using a rectangular box-shape as an example for the sake of simplicity, such an object would have a length, width and thickness (depth) assigned to it. One may either (a) assign these values and choose to maintain them with their original lines, regardless of future changes to the dimensions, or (b) assign these values, but recognize that if, for example, the thickness was extended and eventually became longer than the original length, the originally-assigned depth would thus become, in effect, the length.

In other words, given scenario (a), the thickness may actually be greater than the length; however, applicant has shown no support for limiting the invention in the manner currently claimed.

In scenario (b), if one allows the freedom to change the assigned name (length, width or thickness) of a given dimension, then any of the three may theoretically become one of the other two, and there is no point at which the length would ever be greater than the thickness, because the two would, in essence, switch assigned titles. The longest dimension would always be the length, regardless of whether it was formerly the width, or not. This has practical applications in that an extruded pet food product has these dimensions, and yet subsequently may be cut to a desired shape and size, potentially changing these values. Thus, if scenario (b) applies, applicant's amendment has not actually altered the claim, and does not serve to reduce or simplify the issues. This amendment cannot be entered, however, because it is unclear as to which scenario applicant intended at the time the invention was made.

NOTE: If entered, applicant's amendment would overcome all rejections under 35 USC 112, 2nd paragraph.



KEITH HENDRICKS
PRIMARY EXAMINER